

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

C.A. NO. 03-12216MLW

EASTERN CONTRACTORS, INC.,

Plaintiff,

v.

CITY OF WORCESTER and THOMAS R.  
HOOVER, City Manager, and, HEERY  
INTERNATIONAL, INC. and THOMAS E.  
ELLIS, JR.

Defendants.

PLAINTIFF EASTERN CONTRACTORS INC.'S OPPOSITION AND OBJECTION TO  
MOTION OF THE DEFENDANTS, HEERY INTERNATIONAL, INC. AND THOMAS E.  
ELLIS, JR., TO STRIKE PORTIONS OF PLAINTIFF'S SUPPLEMENTAL AFFIDAVIT IN  
SUPPORT OF MOTION TO CONTINUE HEARING ON SUMMARY JUDGMENT

Now comes the Plaintiff, Eastern Contractors Inc. (hereinafter "Eastern") and hereby opposes and objects to this Honorable Court's consideration of Defendants, Heery International, Inc. and Thomas E. Ellis, Jr., (collectively "Heery") Motion to Strike portions of Plaintiff's supplemental affidavit in support of motion to continue hearing on summary judgment. As grounds therefor, Eastern states, Heery violated Local Rule 7.1(A)(2) and that the motion submitted by Heery is untimely in that the court has previously scheduled a motion hearing for Thursday, December 9, 2004.

## **ARGUMENT**

1. Plaintiff Violated Local Rule 7.1(A)(2).

Local Rule 7.1(A)(2) states that no motion shall be filed unless counsel certify that they have conferred and have attempted in good faith to resolve or narrow the issue. “Once local rules have been properly promulgated, lawyers and litigants are duty bound to comply with them.” In re Jarvis, 53 F.3d 416, 422 (1<sup>st</sup> Cir. 1995). As counsel for Heery has disregarded Local Rule 7.1(A)(2), Heery’s motion must be denied.

2. Eastern Objects to the consideration of Heery’s motion.

Notwithstanding the fact that Heery has failed to comply with Local Rule 7.1(A)(2) requiring denial of Heery’s Motion to Strike, Eastern hereby submits that Heery’s motion is untimely as this Honorable Court has previously scheduled a motion hearing for December 9, 2004. Counsel for Heery was present at this court’s scheduling conference in which it was determined motions would be heard in this matter and indicated no objection. Heery is now attempting to gain favor with the court by filing its motion on the eve of this court’s hearing of motions as a means of preventing Eastern from appropriately responding to said motion. In addition, this tactic, in disregard of the Local Rules of Court, asserting lack of diligence and misrepresentation on the part of Eastern are devices employed by Heery in an attempt to defame Eastern in front of this Honorable Court so as to gain possible advantage at the hearing scheduled for December 9, 2004. This behavior must not be condoned by this Court as doing such would threaten the very substance of the motions to be heard, uneven the playing field in favor of the Defendant Heery, and render opposing parties powerless to defend against such midnight hour tactics. Justice requires that this Honorable Court not consider Heery’s Motion.

### **CONCLUSION**

For the foregoing reasons, Eastern requests that this Honorable Court deny or in the alternative not consider Heery's Motion to Strike portions of Plaintiff's supplemental affidavit in support of motion to continue.

EASTERN CONTRACTORS, INC.,

By its attorneys,

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